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ORIGINAL FILED
Superior Court of the County of Los Angeles

AUG 28 2015

Sherri R. Carter, Executive Officer/Clerk
By: Aldwin Lim, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

RACHELLE ERRATCHU, individually and
on behalf of a class of others similarly
situated,

Plaintiff,

v.

FTD.COM INC., a Delaware corporation,

Defendant.

Case Number:

[Assigned for all purposes to the Hon.
TBD]

~~PROPOSED~~ **ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT AND
RELATED MATTERS**

[Notice of Motion and Motion;
Memorandum of Points & Authorities;
Declaration of Shawn C. Westrick filed
concurrently herewith]

Date: August 25, 2015
Time: 8:30 a.m.
Dept.: TBD

Complaint Filed: July 31, 2015

1 The Plaintiff Rachelle Erratchu (“Plaintiff”) has moved the Court for an Order
2 (1) preliminarily approving the Settlement; (2) directing distribution of Notice to the Class; and
3 (3) setting a hearing date for final approval of the settlement. Defendant FTD.COM Inc.
4 (“Defendant”) does not oppose the motion.

5 This Court, having fully considered the Notice of Motion and Motion, the memorandum
6 of points and authorities in support thereof, the declarations in support thereof, the Settlement
7 Agreement itself, the proposed form of class notice and claim form, and the oral arguments
8 presented to the Court at the hearing on August 25, 2015, and in recognition of the Court’s duty
9 to make a preliminary determination as to the reasonableness of any proposed class action
10 settlement and to conduct a final fairness hearing as to good faith, fairness, adequacy, and
11 reasonableness of any proposed settlement, **HEREBY ORDERS and MAKES**
12 **DETERMINATIONS** as follows:

13 **I. Definitions**

14 The capitalized terms used in this Order shall have the meanings and/or definitions given
15 to them in the Settlement Agreement, a copy of which was filed with the Court on July 31, 2015.

16 For purposes of settlement and final approval of the Settlement Agreement, the Court
17 hereby certifies a Settlement Class to be defined as those persons identified by reference to FTD’s
18 records: (1) who ordered and paid for a floral arrangement from FTD during the Class Period; (2)
19 who provided a California billing address; (3) whose purchase is believed to have involved a
20 substitution; and (4) who did not receive any refund, whether partial or whole, on their purchase.
21 The Court finds, solely for purposes of considering this Settlement Agreement, that the
22 requirements of Code of Civil Procedure Section 382 are satisfied, including requirements for the
23 existence of an ascertainable class, a community of interest, and manageability of a settlement
24 class, that common issues of law and fact predominate, and that a settlement class is superior to
25 alternative means of resolving the claims and disputes at issue in this action.

26 **II. Preliminary Approval Of The Settlement Agreement**

27 The Court has reviewed the Settlement Agreement and the proposed Class Notice and
28 Claim Form, which are incorporated herein by reference. The Court finds that the Settlement

1 Agreement appears to be within the range of reasonableness of a settlement that could ultimately
2 be given final approval by this Court.

3 **III. Approval Of Distribution Of The Notice Of Settlement**

4 This Court finds the proposed Class Notice and Claim Form fairly and adequately advises
5 the potential Class Members of the terms of the proposed settlement. Specifically, the Class
6 Notice describes the nature of the litigation; the scope of the Class; the terms of the proposed
7 Settlement; the procedure by which Class Members may submit Claims; Class Counsel's
8 proposed fee and cost application; the date, time and place of the final approval hearing; and the
9 procedure and deadlines for opting out of the proposed Settlement or for submitting comments
10 and objections.

11 The Notice also fulfills the requirement of neutrality in class notices. Accordingly, the
12 Notice complies with the standards of fairness, completeness, and neutrality required of a
13 combined settlement-certification Class Notice disseminated under authority of the Court.

14 The Court further finds that the direct notice to all putative class members via email¹
15 readily comports with all constitutional requirements, including those of due process, and also
16 fully complies with Cal. Rule of Court, Rule 3.766 and 3.769. In particular, direct notice via
17 email to the email address provided by Class Members is the most likely manner to reach Class
18 Members.

19 Accordingly, good cause appearing therefore, the Court hereby approves the proposed
20 Class Notice and Claim Form (attached to the Settlement Agreement and incorporated by
21 reference), and adopts the following deadlines by which the parties must perform the prescribed
22 action:

23 Within 7 days after Preliminary
24 Approval:

Direct emailing of Notice completed by
FTD/Class Administrator.

25
26 *Heffler Claims*

27
28 ¹ The Court understands that for those customers without an email address that FTD will cause the Class Notice to be sent by regular mail.

1	Within 60 days after Notice being provided:	Last day for Class Members to submit a request for exclusion from the proposed Settlement.
2		
3		Last day for Class Members to submit objections to or comments on the proposed Settlement
4		
5		Postmark deadline for Class Members to submit Claims Form
6	Within 7 days of the end of the claim period:	Last day for filing and service of papers in support of final Settlement approval and requests for attorneys' fees and expenses
7		
8	16 court days after the filing of the Motion:	Final Fairness Hearing
9		

10 **IV. Final Approval Hearing**

11 **A. Logistics**

12 The Court hereby grants the joint motion to set a fairness hearing for final approval of the
13 Settlement Agreement on December 2, 2015 at ^{9:00}~~8:30~~ a.m. in this Department the of the Los
14 Angeles County Superior Court, located at the Central Civil West Courthouse, 600 S.
15 Commonwealth Ave., Los Angeles, CA 90005. At the Fairness Hearing, the Court will consider:
16 (a) the fairness, reasonableness and adequacy of the proposed Settlement; (b) whether the
17 Settlement should be finally approved by the Court; (c) the application for an award of attorneys'
18 fees and costs to Class Counsel in this action; (d) objections to the Settlement, or any of its terms;
19 and (e) such other matters as the Court may deem proper and necessary.

20 Any briefs and other papers in support of the final approval of the Settlement, and Class
21 Counsel's application for an award of attorneys' fees and costs, shall be filed with the Court
22 according to the schedule set out above. After the Fairness Hearing, the Court may enter an order
23 approving the Settlement and enter final judgment in this action, which will adjudicate the rights
24 of all Class Members. The Fairness Hearing may be postponed, adjourned, or continued by order
25 of the Court without further notice to the Settlement Class.

26 **1. Objections**

27 Members of the class who object to the proposed settlement may appear and present such
28 objections at the Final Approval Hearing in person or by counsel, provided that the objecting

1 Class Member submits a written statement containing the name and address of the objecting Class
2 Member and the basis of that person's objections, together with a notice of the intention to
3 appear, if appropriate, which must be sent to Class Counsel no later than 60 days after Notice is
4 provided. No person shall be heard, and no briefs or papers shall be received or considered,
5 unless the foregoing documents have been sent to the Claims Administrator as described in this
6 Order, except as this Court may permit for good cause shown.

7 **2. Requests for Exclusion (Opt-Outs)**

8 Members of the Class may elect to opt out of this Settlement Agreement, relinquishing
9 their rights to benefits thereunder (except to the extent that prospective relief under the Settlement
10 Agreement shall apply to such persons). Members of the Class who opt out of the Settlement
11 Agreement will not release their claims under the terms of the Settlement Agreement. All notices
12 of intent to opt out of the Settlement must also be postmarked by 60 days after Notice is provided,
13 and must include the Class members' name, address, telephone number, and signature, with a
14 statement that includes the following language: "I want to opt out of this Class Action Settlement
15 concerning the substitution of flowers or containers for floral arrangements purchased on
16 FTD.com." Requests for exclusion should be mailed to the Claims Administrator, who will
17 forward them to FTD's counsel and Class Counsel, who will then forward copies to the Clerk of
18 the Court.

19 Members of the Class who fail to submit a valid and timely request for exclusion shall be
20 bound by all terms of the Settlement Agreement and the Final Order and Judgment, regardless of
21 whether they (1) have requested exclusion from the Settlement Agreement; (2) filed a valid claim
22 form; and/or (3) receive a Settlement Payment. Any member of the Class who submits a timely
23 request for exclusion or opt-out may not file an Objection to the Settlement and shall be deemed
24 to have waived any rights or benefits under the Settlement Agreement (except to the extent that
25 prospective relief under the Settlement Agreement shall apply to such persons).

26 **IT IS FURTHER ORDERED** that, if for any reason the Court does not grant final
27 approval of the Settlement Agreement, all documents, evidence, interactions and proceedings in
28 connection therewith shall be without prejudice to the status quo ante rights of the parties to the

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litigation, as more specifically set forth in the Settlement Agreement.

IT IS SO ORDERED.

Dated: 8/20, 2015

WILLIAM F. HIGHBERGER, JUDGE

HON. Judge of the Superior Court

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PROOF OF SERVICE

I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and not a party to this action; my current business address is **1990 S. Bundy Dr., Ste. 280 Los Angeles, CA 90025**

On **July 31, 2015**, I served the foregoing document(s) described as:

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT AND RELATED MATTERS

on the interested parties in this action as follows:

X BY THE FOLLOWING MEANS:

I placed an original enclosed in sealed envelope(s) addressed as follows:

Jason C. Wright, Esq.
JONES DAY
555 S. Flower St., 50th Floor
Los Angeles, CA 90071

x BY HAND DELIVERY: I engaged Elite Attorney & Messenger Service to deliver the above referenced document(s) **by hand** to the above listed addressee(s).

x Executed on **July 31, 2015**, at **Los Angeles, California**.

x I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

x I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Sebastian Burnside